

Salem No. 1, Inc. d/b/a The Seville and Nursing and Convalescent Home Division, Local No. 50, Service Employees International Union, AFL-CIO-CLC, Petitioner. Case 14-RC-9465

July 26, 1982

DECISION AND CERTIFICATION OF REPRESENTATIVE

The Board has considered objections to an election held on August 27, 1981,¹ and the Regional Director's report recommending disposition of same. The Board has reviewed the record in light of the exceptions and brief, and hereby adopts the Regional Director's findings and recommendations.²

CERTIFICATION OF REPRESENTATIVE

It is hereby certified that a majority of the valid ballots have been cast for Nursing and Convalescent Home Division, Local No. 50, Service Employees International Union, AFL-CIO-CLC, and that, pursuant to Section 9(a) of the National Labor Relations Act, as amended, the said labor organization is the exclusive representative of all the employees in the following appropriate unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment:

All full-time and regular part-time employees including nurse aides, certified medical technicians, physical therapy and activity aides,

¹ The election was conducted pursuant to a Stipulation for Certification Upon Consent Election. The tally was: 35 votes for, and 19 against, the Petitioner; there were 4 challenged ballots, an insufficient number to affect the results of the election.

² The Employer's exceptions raise no material or substantial issues of fact or law which warrant reversal of the Regional Director's findings and recommendations or require a hearing.

Contrary to our dissenting colleagues, we do not believe that the alleged threats of violence or the slashing of a car tire warrant a hearing in this case. There is no evidence that union agents were involved in the alleged misconduct, and the dissenters do not suggest otherwise. Given the absence of such evidence of union involvement, the test to be applied is whether the character of the alleged conduct was so aggravated as to create a general atmosphere of fear and reprisal rendering a free election impossible. *Central Photocolor Company, Incorporated*, 195 NLRB 839 (1972). Assuming the alleged conduct occurred, it was not of such an aggravated nature. The only physical action which occurred was the slashing of a tire on a supervisor's car. The only evidence of threats of violence was that on three occasions a group of employees were overheard talking about slashing the supervisor's tire. In addition, one employee, not known to be a union supporter, told another employee that if the Union got in, they had better watch their cars. One employee also told another employee that prounion employees were "out to get her." Lastly, while one employee stated that she received numerous anonymous phone calls, including three calls on the night before the election, there is no evidence that the calls had any connection with the Union or the pending election. In each instance a caller with a male voice uttered the employee's name and started breathing heavily. The caller made no further remarks. Thus, even if all the above conduct occurred, it did not involve widespread threats or acts of violence which would prevent the holding of a free election.

beautician, dietary, housekeeping, laundry and maintenance employees employed by the Employer at its Salem, Missouri, facility, EXCLUDING all registered nurses, licensed practical nurses, charge medical aides, dietary supervisor, housekeeping supervisor, laundry supervisor, maintenance supervisor, activity director, office clerical and professional employees, guards and supervisors as defined in the Act.

CHAIRMAN VAN DE WATER and MEMBER HUNTER, dissenting:

Unlike our colleagues, we would reverse the Regional Director and remand this case for a hearing on the Employer's Objections 4 and 5. These objections allege that the Petitioner, through its agents, threatened employees and supervisors with destruction of their property and slashed the tires on the car of one supervisor. In support of its objections, the Employer presented five witnesses who, in sworn statements, testified that on two occasions employees threatened other employees with damage to their cars if they did not support the Union; that on three occasions groups of employees spoke of slashing the tires on a supervisor's car; that the supervisor's car tires had, in fact, been slashed; and that an employee received several anonymous phone calls and was later told by another employee that the prounion employees were "out to get her" because they believed she had taken a bribe to vote against the Union. Finally, one of the witnesses stated that two employees went so far as to ask Administrator Hancock if they would be covered by their insurance if their tires were slashed. Most of the statements were denied by the employees to whom they were attributed.

Even assuming that, as found by the Regional Director, this conduct cannot be attributed to the Petitioner, in our view such widespread talk of violence and the alleged act of violence, if proven, might indeed have created an atmosphere of confusion and fear of reprisal rendering a free expression of choice impossible.³ The Employer has offered evidence both that a number of employees were directly involved in discussions of violent conduct and, further, that other employees knew of these threats, as indicated by the question to Administrator Hancock. Of course, we do not know the number of employees involved or made aware of this conduct. Nor, for that matter, do we know whether this conduct actually took place. But neither do our colleagues, who are nevertheless quick

³ See, e.g., *Steak House Meat Company, Inc.*, 206 NLRB 28 (1973).

to approve the Regional Director's unsupported statement that such conduct, if it occurred, did not create a general atmosphere of fear and reprisal among the employees. Maintenance of laboratory conditions for a free election is important to the employees regardless of the source that may destroy such conditions. In our view, a hearing is necessary to resolve credibility and other issues raised by the Employer's evidence, including the issue of the extent of dissemination of these alleged threats. Such evidence is critical to a determination

of whether a general atmosphere of fear was created,⁴ and the record as it stands is insufficient to make such a determination.⁵

Accordingly, we would order a hearing on Objections 4 and 5 and dissent from our colleagues' failure to do so.

⁴ See *Poinsett Lumber and Manufacturing Company*, 116 NLRB 1732, 1739 (1956).

⁵ In addition, a hearing might reveal in more detail than the Regional Director's investigation the connection, if any, between the Petitioner and the employees who allegedly made such threats.